

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

GARY A. LAVITE,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 06-408-JPG
)	
MEARL JUSTUS and ARAMARK FOOD)	
SYSTEMS,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff, a detainee in the St. Clair County Jail, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983.

This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

- (a) **Screening.**— The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**— On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—
 - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
 - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Upon careful review of the complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; this action

is legally frivolous and thus subject to summary dismissal. To facilitate the orderly management of future proceedings in this case, and in accordance with the objectives of Federal Rules of Civil Procedure 8(f) and 10(b), the Court finds it appropriate to break the claims in Plaintiff's *pro se* complaint and other pleadings into numbered counts, as shown below. The parties and the Court will use these designations in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court. The designation of these counts does not constitute an opinion as to their merit.

COUNT 1: Against unspecified defendants for denying Plaintiff payment for working in the jail kitchen.

COUNT 2: Against unspecified defendants for denial of medical treatment.

COUNT 3: Against unspecified guards for mistreatment based upon race.

COUNT 1

Plaintiff states that while detained in the St. Clair County Jail, he worked as a volunteer dishwasher in the facility kitchen. He was offered a job as a cook, and accepted the position because he believed he would receive a weekly bag of free commissary merchandise. He never received that expected compensation. Plaintiff believes that two black detainees named Johnson and Harris received the commissary bag that Plaintiff "earned" for working in the kitchen.

An inmate does not have a constitutionally protected property or liberty interest in a prison job, *see DeWalt v. Carter*, 224 F.3d 607, 613 (7th Cir. 2000), nor does a prisoner have a constitutional right to compensation for working. *See Vanskike v. Peters*, 974 F.2d 806, 809 (7th Cir. 1992). Accordingly, Plaintiff has not stated a claim of constitutional dimension regarding not receiving compensation for his work in the kitchen. Count 1 is **DISMISSED** from the action with prejudice. *See* 28 U.S.C. § 1915A.

COUNT 2

Plaintiff states that he suffers from tuberculosis and that on May 9, 2006, he was not allowed to see the nurse.

[F]or a pretrial detainee to establish a deprivation of his due process right to adequate medical care, he must demonstrate that a government official acted with deliberate indifference to his objectively serious medical needs. *See Qian*, 168 F.3d at 955. This inquiry includes an objective and subjective component. The objective aspect of the inquiry concerns the pretrial detainee's medical condition; it must be an injury that is, "objectively, sufficiently serious." *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) (internal quotations omitted); *see also Henderson v. Sheahan*, 196 F.3d 839, 845 (7th Cir. 1999). "A 'serious' medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997).

Even if the plaintiff satisfies this objective component, he also must tender sufficient evidence to meet the subjective prong of this inquiry. In particular, the plaintiff must establish that the relevant official had "a sufficiently culpable state of mind[,] ... deliberate indifference to [the detainee's] health or safety." *Farmer*, 511 U.S. at 834, 114 S.Ct. 1970. Evidence that the official acted negligently is insufficient to prove deliberate indifference. *See Payne*, 161 F.3d at 1040. Rather, as we have noted, "'deliberate indifference' is simply a synonym for intentional or reckless conduct, and that 'reckless' describes conduct so dangerous that the deliberate nature of the defendant's actions can be inferred." *Qian*, 168 F.3d at 955. Consequently, to establish deliberate indifference, the plaintiff must proffer evidence "demonstrating that the defendants were aware of a substantial risk of serious injury to the detainee but nevertheless failed to take appropriate steps to protect him from a known danger." *Payne*, 161 F.3d at 1041. Simply put, an official "must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Higgins*, 178 F.3d at 510. Even if he recognizes the substantial risk, an official is free from liability if he "responded reasonably to the risk, even if the harm ultimately was not averted." *Farmer*, 511 U.S. at 843, 114 S.Ct. 1970.

Jackson v. Illinois Medi-Car, Inc., 300 F.3d 760, 764-65 (7th Cir. 2002).

Based on these legal standards, Plaintiff has failed to state a claim because he has not alleged that any defendant acted with the requisite culpable state of mind required to show deliberate indifference to a serious medical need. Accordingly, Count 2 is **DISMISSED** from the action

without prejudice. *See* 28 U.S.C. § 1915A.

COUNT 3

Finally, Plaintiff makes a number of general allegations regarding the mistreatment of white inmates by black guards. He states that the black guards are angry with their white supervisor, causing those black guards to mistreat white inmates. Plaintiff believes that his treatment at the jail is a result of his race. Plaintiff states that one supervisor told him, “I’ll have your white [expletive].”

A “prison administrative decision may give rise to an equal protection claim only if the plaintiff can establish that ‘state officials had purposefully and intentionally discriminated against him.’” *Meriwether v. Faulkner*, 821 F.2d 408, 415 n.7 (7th Cir.), *cert. denied*, 484 U.S. 935 (1987); *citing Shango v. Jurich*, 681 F.2d 1091, 1104 (7th Cir. 1982).

The gravamen of equal protection lies not in the fact of deprivation of a right but in the invidious classification of persons aggrieved by the state's action. A plaintiff must demonstrate intentional or purposeful discrimination to show an equal protection violation. Discriminatory purpose, however, implies more than intent as volition or intent as awareness of consequences. It implies that a decisionmaker singled out a particular group for disparate treatment and selected his course of action at least in part for the purpose of causing its adverse effects on the identifiable group.

Nabozny v. Podlesny, 681 F.2d 1091, 1103 -1104 (7th Cir. 1996), *quoting Shango v. Jurich*, 681 F.2d 1091, 1104 (7th Cir. 1982).

Plaintiff has failed to state an equal protection claim because he has not shown that he was deprived of any rights, nor that any potential deprivations were based on race. Plaintiff has no entitlement to pay for his work in the jail, thus he was not denied a constitutional right in not receiving compensation. He states that he was not allowed to see a physician immediately after he requested one, but he does not link this allegation to any discriminatory intent. Finally, he states that one of the guards invoked his race in a harassing comment. The Seventh Circuit has unequivocally

held that these types of comments do not violate the equal protection clause.

Isolated, infrequent incidents of verbal abuse that do not give rise to an Eighth Amendment claim. *See, e.g.*, *Gutierrez v. Peters*, 111 F.3d 1364, 1375 (7th Cir. 1997); *Kincaid v. Vail*, 969 F.2d 594, 602 (7th Cir. 1992).

The use of racially derogatory language, while unprofessional and deplorable, does not violate the Constitution. *See Patton v. Przybylski*, 822 F.2d 697, 700 (7th Cir. 1987); *accord Williams v. Bramer*, 180 F.3d 699, 706 (5th Cir.), *clarified on rehearing*, 186 F.3d 633 (5th Cir. 1999). Standing alone, simple verbal harassment does not constitute cruel and unusual punishment, deprive a prisoner of a protected liberty interest or deny a prisoner equal protection of the laws. *See Ivey v. Wilson*, 832 F.2d 950, 955 (6th Cir. 1987) (per curiam) (Eighth Amendment); *Patton*, 822 F.2d at 700 (due process); *Williams*, 180 F.3d at 705-06 (equal protection).

DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir. 2000).

In short, Plaintiff has not demonstrated that he was deprived of any constitutional rights based on his race, and therefore, he has not stated a claim. Count 3 is **DISMISSED** from the action without prejudice.

In summary, Plaintiff's complaint does not survive review under § 1915A. Accordingly, this action is **DISMISSED** without prejudice. Plaintiff is advised that the dismissal of this action will count as one of his three allotted "strikes" under the provisions of 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

Dated: February 13, 2007

s/ J. Phil Gilbert
U. S. District Judge